

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN NATIONAL MANUFACTURING INC.,
Petitioner,

v.

SLEEP NUMBER CORPORATION
f/k/a SELECT COMFORT CORPORATION,
Patent Owner.

Case No. IPR2019-00514
Patent No. 5,904,172

STIPULATED PROTECTIVE ORDER

The parties hereby stipulate to and petition the Board to enter the following Stipulated Protective Order (“Protective Order”) in this *Inter Partes Review* (“IPR”), which is modified from the Board’s Default Protective Order to include heightened levels of confidentiality protection to mirror that in the district court actions involving the same parties, *Sleep Number Corporation v. American National Manufacturing, Inc.*, 5:18-cv-00357AB(SPx) (C.D. Cal. 2018) and *Sleep Number Corporation v. Sizewise Rentals, LLC*, 5:18-cv-00356AB(SPx) (C.D. Cal.) (hereinafter “District Court Cases”).

Standing Protective Order

This standing protective order governs the treatment and filing of confidential information, including documents and testimony.

1. GOOD CAUSE STATEMENT.

There is good cause to modify the Board’s Default Protective Order in this matter. First, the Court in the District Court Cases entered an order on September 26, 2019 (5:18-cv-00357AB(SPx), Doc. 173; and 5:18-cv-00356AB(PPx), Doc. 177) modifying the District Court Cases’ protective order to include this IPR, which allows the parties to utilize documents designated under that Protective Order in this IPR. As a result, those documents should be entitled to the same level of protection in this IPR, which justifies modification of the Board’s Default Protective Order. Second, the parties anticipate that documents in this IPR, including produced documents, will potentially include deposition transcripts, and other disclosures involving confidential product and patent information, non-public confidential

financial and sales information, confidential source code information of the parties, confidential source code information of third-parties, and other proprietary information, is in need of a heightened level of confidentiality protection like in the District Court Cases. This also justifies modification of the Board's Default Protective Order. The parties hereby incorporate by reference the District Court Cases' protective order and modifications.

It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: IPR2019-00497, IPR2019-00500, and IPR2019-00514.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 Confidential Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record, House Counsel, as well as each of their support staff.

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or discovery as "CONFIDENTIAL," "HIGHLY

CONFIDENTIAL – OUTSIDE COUNSEL ONLY,” or “HIGHLY CONFIDENTIAL SOURCE CODE — OUTSIDE COUNSEL ONLY.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” Information or Items: extremely sensitive “Confidential Information or Items”, including non-public confidential financial and sales information, whose disclosure to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.9 “HIGHLY CONFIDENTIAL SOURCE CODE – OUTSIDE COUNSEL ONLY” Information or Items: extremely sensitive “Confidential Information or Items” if it comprises or describes Source Code. “Source Code” means computer/software code, scripts, assembly language, source code, object/executable code, source code listings, object code listings and descriptions of object code, Hardware Description Language (HDL) or Register Transfer Level (RTL) files that describe the hardware design of any ASIC or other chip, and formulas, engineering specifications, or schematics that define or otherwise describe

in detail the algorithms or structure of software. Source Code documents at least include (1) printed documents that contain or refer to selected Source Code components; (2) electronic communications and descriptive documents, such as emails, design documents and programming examples, which contain or refer to selected Source Code components; (3) electronic Source Code documents that reside in a Source Code repository from which software and related data files may be compiled, assembled, linked, executed, debugged and/or tested; and (4) transcripts, reports, video, audio, or other media that include, quote, cite, describe, or otherwise refer to Source Code, Source Code files, and/or the development thereof. Source Code files include, but are not limited to documents containing source code in “C”, “C++”, Java, Java scripting languages, assembler languages, command languages and shell languages. Source Code files may further include “header files,” “make” files, project files, link files, and other human-readable text files used in the generation, compilation, translation, and/or building of executable software, including software intended for execution by an interpreter. Documents and things produced during this Action designated with the label “HIGHLY CONFIDENTIAL SOURCE CODE – OUTSIDE COUNSEL ONLY,” shall be protected in accordance with this Protective Order and subject to additional protections provided herein below.

2.10 In-House Counsel: attorneys who are employees of a party to this Action, or work in the legal department of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

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